

Nizamuddin Ahmed

Vs

Narbada Prasad and Others

Civil Appeal No. 1384 of 1973

(A. Alagiriswami, P.K. Goswami, N.L. Untwalia JJ)

22.08.1975

JUDGMENT

ALAGIRISWAMI, J. -

1. This appeal arises out of an election petition filed by the appellant, a voter, questioning the election of the first respondent to the Madhya Pradesh Legislative Assembly from the Lanji constituency in Balaghat district held on March 8, 1972.
2. The first respondent had applied for a Congress ticket and on being refused a Congress ticket he contested the election as an independent candidate and won the election having obtained 20,051 votes. The second respondent was the Congress candidate who got the next highest votes of 19,166. The other respondents were also unsuccessful candidates.
3. The appellant made a number of allegations against the successful candidate the purport of which would appear from issues Nos. 1 to 4 set out below :
  1. Has the respondent No. 1 incurred or authorised expenditure beyond the prescribed limit as detailed in paragraph 5-B, B-i, B-ii, B-iii, B-iv and B-v and what is its effect ?
  2. Whether the respondent No. 1 made a gift of expenses for election including the deposit of Rs. 250 at the time of filling the nomination papers of the respondents Nos. 5 and 6 with a view of divide the votes to support his candidature as detailed in paragraph 5(c) of the petition and does this amount to a corrupt practice under Section 123(1)(A) and (B) of the Representation of People Act, 1951 ?
  3. Whether the respondent No. 1 obtained the services of Shri Raizada as alleged in paragraph 5(E) and the Schedule concerned for the furtherance of the prospects of his election and is he guilty of a corrupt practice under Section 123(7) of the Representation of People Act. 1951 ?
  4. Whether the respondent No. 1 got printed and widely distributed in the constituency the leaflet with a heading with his symbol with threat that Goddess Durga rides on his symbol and in case he is not voted they will suffer from the wrath of Goddess Durga ? Does this amount to an appeal on the ground of religion or religious symbol within the mischief of Section 123(3) of the Representation of People Act, 1951 ?

All the issues were found against the appellant and as we agree with the learned Judge completely we do not consider it necessary to discuss the evidence at length. We shall indicate our reasons

within a short compass.

Issue No. 1

4. The first item of expenditure was a sum of Rs. 1500 representing the amount alleged to have been spent by the first respondent for putting up sheds at each of the hundred polling booths in the constituency and for having boards at each of those polling booths. The second item was sum of Rs. 2340 alleged to have been spent for two lorries for nine days at the rate of Rs. 100 a day and for a jeep for nine days at the rate of Rs. 60 per day. The third item was a sum of Rs. 400 consisting of Rs. 100 alleged to have been given to one Bhivram for repairing the roof of Ram Mandir in village Mohara and another sum of Rs. 300 alleged to have been paid to one Alambeg of village Rusewada for constructing a well in the village.

5. As regards the expenses for the sheds and boards it was admitted by the first respondent that he did not spend any amount for putting up sheds. On the other hand there was no evidence on the appellant's side as to the number of sheds which were put up or on the amount spent on putting up the sheds. The only evidence which had any relevance to this question was that of PW 13 that he made the mandap at the request of Brillal Mishra, Sarpanch of the Gram Panchayat. Bhanegaon and that the first respondent had made the request to Brijlal Mishra to make arrangements for the construction of the mandap and paid him Rs. 20 which in turn was given to him by Brijlal Misra. The evidence of this witness has been rightly disbelieved by the High Court as he also said that one Manmohan paid the money to Brijlal Mishra, that he is unable to recognise Manmohan and he himself had not told about it to anybody till he was examined in the court. In addition, both Brijlal Mishra as well as the first respondent deny this. The whole case seems to have proceeded on the basis that there must necessarily have been one shed at each polling booth and each shed would have cost at least Rs. 10. It may well be that friends and sympathisers of the first respondent had put up sheds. In the absence of any positive evidence that the first respondent had spent any money for putting up those sheds we cannot hold that this amount was spent. Similarly there is no positive evidence about the amount spent for the boards at each of the polling booths.

6. As regards the conveyance a sum of Rs. 1,800 is said to have been incurred by contractor Devsibhai for and on behalf of the first respondent. The truck numbers were given as BYY 2809 and MPK 6757. There was no evidence, oral or documentary, regarding the number of days for which the trucks were used nor about the rate at which the trucks were paid for. Apart from the scanty material found in the petition on this point it is found that while the number of the jeep was given the letters which preceded the number were not given. Exhibits R-15 and R-16 show that there was a motorcycle bearing number MPK 2770 and one Bedford truck bearing number MPJ 2770, both belonging to persons other than Devsibhai and in any case they were not jeeps. The truck number BYY 2809 is found to belong to M/s. Raj Kumar Transport Service of Tumsar. Ex. R-17 shows that it was not in use from July 1, 1965 till May 11, 1973. The evidence regarding purchase of diesel oil for this truck was in respect of the period from June 10, 1971 to January 25, 1972 and did not cover the relevant period of the election. Apart from the fact that it was the evidence given by a person who had not even been summoned to give evidence, the witness PW 20 was an employee of a firm in which Radheshyam, President of the Block Congress, Lanji, who was working on behalf of the second respondent, was a partner and he had no personal knowledge. He also stated that he did not meet Devsibhai. Therefore no satisfactory evidence is available to prove that truck number BYY 2809 was used for the purposes of the first respondent's election. The same applies to the jeep. That apart, the evidence regarding the use of these trucks and jeep covers only three days and none of the witnesses speak to the number of the truck PW 3 spoke of the first

respondent having come to his village 8 or 10 days before Holi and of two jeeps followed by one truck having there. PW 4 stated that the first respondent had come to village Sadra on March 4, 1972 and one jeep and two trucks had come there. PW 8 spoke of a procession in which there was one car two jeeps and two trucks. Thus the evidence is only about the use of trucks and jeeps on three days. At the most, therefore, it would be said that a sum of Rs. 300 was incurred in using one truck on three days. This it may be noted is even though there is no evidence about the number of truck or the amount paid or about Devsibhai's connection with it. There is certainly no evidence to show that two trucks and one jeep were used for nine days and a sum of Rs. 2,340 was spent.

7. As regards that payment of Rs. 100 to Bhivram, PW 11, for repairing the roof of Ram Mandir in village Mohara, it is to be noticed that one Chaturbhuj was the Sarvarakar of the temple and Chaturbhuj as PW 6 has deposed that no amount of Rs. 100 was donated by the first respondent. This Bhivram was not even a member of the temple committee. It appears also that the mandir is an old one and required repairs at the relevant time to the extent of Rs. 2,000 to Rs. 3,000. The High Court has rightly disbelieved this allegation.

8. As regards the construction of a well, it appears that there is already a well and it belongs to one Jahruddin, a very rich person Alambeg to whom the amount is said to have been paid is not said to be an influential person and rich man like the owner of the well need not certainly look to a donation for repairing his well. Furthermore, Alambeg, PW 17, did not tell about it to anybody till he gave evidence in the Court.

9. The result of this discussion is that the appellant should be held to have failed miserably in his attempt to show that the first respondent had exceeded the statutory limit of expenses.

#### Issue No. 2

10. This issue relates to the payment to respondents Nos. 5 and 6 of Rs. 250 each towards deposit and Rs. 50 each for expenses. During the arguments it was admitted on behalf of the appellant that there was no evidence of payment to respondent No. 6. The evidence in respect of the allegation of payment to respondent No. 5 was that of respondent No. 5 himself as PW 18 and another witness Rajaram Patel, PW 19. Respondent No. 5 had asked for any one of the three symbols, 'Elephant', 'Flower' and 'Lion'. The first respondent's election symbol was 'Lion'. It is quite unlikely that the first respondent would have therefore paid any money to the fifth respondent. The learned Judge, who had an occasion to note fifth respondents demeanor when he gave evidence, has noted that whenever a question was asked he took two to three minutes to answer and even though he understood the question he avoided the answer. The fifth respondent's nephew, Gautam was the Secretary of the Republican Party of India for an area consisting of 31 villages. He has stated that the Republican Party supported the first respondent in the election. To the same effect is the evidence of Mr. Meshram, RW 9, an advocate who is also the President of the Republican Party of India for Madhya Pradesh. It is, therefore, extremely unlikely that the first respondent would set up the fifth respondent as a candidate and pay the deposit amount to him. We are not entering into the question whether the allegations in the petition even if proved would amount to a corrupt practice. We agree with the High Court that this allegation has not been proved.

#### Issue No. 3

11. There is no satisfactory evidence before the Court to show that Raizada, who is alleged to have worked for the first respondent was a gazetted officer in the Government. From an answer given by

him even in his chief examination that an order placing him under suspension was issued under the signature of the Governor as also an order reinstating him it could be inferred that he was probably a gazetted officer though that is not proved by the best evidence possible. But the appellant had miserably failed to prove that he worked for the first respondent in the election. The allegation in the petition is only that he moved in jeep No. 2770 (MPK) and visited three villages and he moved in a Fiat No. MPK 25 and visited three villages. Fiat car No. MPK 25 is one belonging to the first respondent. We have already shown that there is no satisfactory evidence about the registration number of the jeep. However, the recitation of the various villages which Raizada is alleged to have visited and the dates on which he did so does not amount to an allegation of corrupt practice. It is not alleged that he visited these villages in the company of the first respondent. However, evidence was let in that he made a speech asking people to vote for the first respondent. Being a government servant it is extremely unlikely that he would run the risk of making a speech requesting people to vote for the first respondent. Without going elaborately into the evidence on this point it is enough to say that we agree with the High Court in its assessment of the evidence on this point and hold that the appellant has failed to substantiate the allegations covered by this issue.

Issue No. 4

12. The allegation on this point is that the first respondent had got a pamphlet, Ex. P-1, printed and published, the contents of which were as follows :

Your popular candidate, Shri Narbada Prasad Shrivastava is from Lanji constituency. 'Lion' is the vehicle of world's Goddess mother Durga, which is the election symbol of indivisible power and faith of the Indian public, the same lion is the election symbol of Shri Narbada Prasad Shrivastava. After adopting and making his election symbol of the vehicle of Goddess Durga, Shri Narbada Prasad Shrivastava requests to the whole public, for the sake of Goddess Durga to put the seal on her vehicle, and to make successful the vehicle of Goddess Durga.

Without going into the question whether even if the allegations are proved the appeal made in this pamphlet could bring it under Section 123(3) of the Representation of the People Act, we may point out there is no proof at all that it was got printed by the first respondent. So the success of the appellant on this issue would depend purely on the question whether this pamphlet was distributed by the first respondent or by others at his instance. Two leaflets, Ex. P-1 and Ex. P-2, were alleged to have been distributed but it is unnecessary to refer to Ex. P-2. Chandrabhan Singh, RW 2 denies this. One Yakub Thekedar who is said to have been present when Chandrabhan Singh gave the pamphlet to the appellant was not examined as a witness. The first appellant stated that he had not seen Ex. P-1 before he saw it in the Court and he had not asked anybody to distribute it. Babulal, PW 1, was not believed by the High Court because first he said that Ex. P-1 was given to him by the first respondent and then that it was given to him by Chandrabhan Singh. Both the first respondent and Chandrabhan Singh denied this. PW 3's evidence was rightly not accepted because the petition does not mention his village as one where the pamphlet was distributed. The High Court has elaborately discussed the question of the evidence of PW 4 and shown that it cannot be accepted. We see no reason to differ from it. The third respondent as PW 5 deposed that Ex. P-1A, a copy of Ex. P-1, was given to him by Chandrabhan Singh. Even though he is a lawyer and he knew that distribution of Ex. P-1A was against law he did not make any report to the Returning Officer or any other authority. Furthermore, in his written statement he had not mentioned the name of Chandrabhan Singh, who is alleged to have distributed the pamphlet to him. The evidence of PWs 6, 7, 8, 12 and 14 have also been discussed by the High Court and disbelieved. We see no reason to take a different view. At best it may be said that on the evidence on this point of some of the

petitioner's witnesses two views are possible but if one of them is accepted by the learned trial Judge, who had the advantage of seeing the witnesses while they were giving evidence and a good opportunity of deciding for himself whether the witnesses were stating the truth, his view is certainly entitled to great weight and we can see no strong reason to differ from him.

13. Furthermore, one common factor about the evidence regarding all the issues is that it is of very nebulous nature. There is nothing clinching about the evidence. Even the allegations in the petition are very vague and quite often the actual evidence is very rarely in accordance with the allegations in the petition. In a case where the charge is of corrupt practice it is unsafe to place any reliance on such evidence. The allegations of corrupt practice have to be proved by evidence which leave little room for doubt even though it may not be necessary to prove the allegations beyond all reasonable doubt as in a criminal prosecution. Judged by that test none of the charges made by the appellant have been satisfactorily proved.

14. The appeal is, therefore, dismissed. The appellant will pay the costs of the first respondent.

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